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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,503	06/28/2001	Craig Bienick		3221

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EXAMINER

HANSEN, JAMES ORVILLE

ART UNIT PAPER NUMBER

3637

DATE MAILED: 04/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/892,503

Applicant(s)

BIENICK, CRAIG

Examiner

James O. Hansen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19, 22-27 and 47-61 is/are pending in the application.
- 4a) Of the above claim(s) 20 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 August 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. After further review and consideration, the last office action **has been withdrawn** in view of the following Non-Final Office Action on the merits.

Election/Restrictions

1. Applicant's election without traverse of the species of Figures 1-5 in Paper No. 6 is acknowledged. As such, Claims 20-21 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-19, 22-27 & 47-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over French publication 2,720,145 [known hereafter as FR'145] in view of Peterson [U.S. Patent No. 3,857,624] and Kane et al., [U.S. Patent No. 5,540,493]. FR'145 (figures 1-8) teaches of a refrigerator shelf that is inherently utilized within a refrigerator compartment; the compartment inherently comprising substantially parallel side walls, a rear wall there between, a plurality of substantially vertically spaced shelf-supporting ledges along each of said side walls, and said shelf-supporting ledges being disposed in substantially horizontally aligned pairs as is conventional in

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the art, said shelf being slidable and defined by a piece of glass (8) and front and rear border members (1) each made of a molded material, said glass piece having opposite side edges and opposite front and rear edges (see fig. 2), said front and rear border members having a respective glass piece front edge-receiving channel and a glass piece rear edge-receiving channel, said channels open in opposing relationship to each other (see fig. 1), said glass piece front and rear edges being secured in the respective glass piece front edge-receiving and rear edge-receiving channels (figs. 1-2), the shelf being disposed with the border members such that a sliding relationship with the inherent ledges can be established as readily apparent to the examiner, and at least a portion of each glass piece side edge disposed between said front and rear border members being substantially completely exposed (see side edge of fig. 2) whereby conductivity within the refrigerator compartment is enhanced. The compartment inherently including a space between each shelf-supporting ledge and an associated exposed glass piece side edge portion to effect air flow there between thus further enhancing conductivity within the refrigerator compartment; wherein opposite side portions of said front and rear border members are inherently supported by said ledges; wherein said rear border member is of a generally U-shaped configuration (note fig. 2) defined by a bight border portion and opposite leg border portions, said rear border channel is defined by a bight channel portion and leg channel portions of said respective bight border portion and said opposite leg border portions, and said glass piece rear edge and adjacent portions of said glass piece side edges are secured in the respective bight channel portion and the leg channel portions of said rear border channel.

FR 145 teaches applicant's inventive claimed structure as disclosed above, but does not physically depict the inherent refrigerator compartment upon which it is to

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be located or specifically state that the border members as being made out of a polymeric / co-polymeric molded synthetic material. Peterson (figures 1-3) is cited as an evidence reference to show that the use of opposing ledges (14, 16) in a refrigerator compartment allowing a shelf to be slid into and out of the compartment is old and well known. The reference clearly teaches that persons of ordinary skill in the art were aware that by adding ledges to the side walls of a refrigerator compartment, a shelf could be held in a horizontal position and extended or retracted in relation to the compartment depending upon the needs of the user. Kane (figures 1-16) teaches of a refrigerator shelf in an analogous art wherein the self includes a glass panel having an encapsulating perimeter cover made out of a co-polymeric molded synthetic material which is bonded to the panel [see specification – further cited on page 7 of the instant application as being a known process]. As such, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the shelf of FR`145 so as to utilize the bonded polymer material as taught by Kane because this arrangement would provide the shelf of FR`145 with a durable yet liquid resistant perimeter trim piece. As to the bonding being achieved via an adhesive means, it is viewed that this fastening arrangement would have been obvious to one having ordinary skill in the art at the time the invention was made, since it has been held to be within the general skill of a worker in the art to select a known fastening element/agent on the basis of its suitability for the intended use as a matter of obvious design choice.

As to claims 5, 10, 15, 23, the front border member [so as not to be confused with the U-shaped profile of the rear border member] may be viewed as having a generally U-shaped configuration [note the cross-section as depicted in fig. 1 – it is

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viewed that both border members are U-shaped in cross section] defined by a bight border portion and opposite leg border portions, said front border channel is defined by a bight channel portion and leg channel portions of said respective bight border portion and said opposite leg border portions, and said glass piece front edge and adjacent portions of said glass piece side edges are secured in the respective bight channel portion of said front border channel and the leg channel portions.

Response to Arguments

3. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

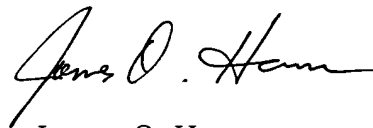
4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. EPO publication 856,712 and Marx describe glass panels with perimeter border members.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James O. Hansen whose telephone number is 703-305-7414. The examiner can normally be reached on Mon.-Fri. 8-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "James O. Hansen".

James O. Hansen
Primary Examiner
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JOH
March 25, 2004